



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region 1**  
**5 Post Office Square, Suite 100**  
**Boston, MA 02109-3912**

**VIA ELECTRONIC FILING**

July 5, 2016

Ms. Eurika Durr  
Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1201 Constitution Avenue, NW  
U.S. EPA East Building, Room 3334  
Washington, DC 20004

**RE: Sterling Suffolk Racecourse, LLC**  
**NPDES Permit appeal No. 15-12; NPDES Permit No. MA0040282**

Dear Ms. Durr:

Please find a Fifth Joint Status Report, and accompanying Certificate of Service, in connection with NPDES Appeal No. 15-12.

Sincerely,

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Enclosures

Cc: Michael D. Vhay, Esq.  
Valerie A. Moore, Esq.

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

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In the Matter of:	)	
	)	
Sterling Suffolk	)	
Racecourse, LLC	)	NPDES Appeal No. 15-12
	)	
NPDES Permit No. MA0040282	)	
	)	
_____	)	

**FIFTH JOINT STATUS REPORT**

Region 1 of the United States Environmental Protection Agency (“Region”) and Sterling Suffolk Racecourse, LLC (“Suffolk”) are providing a joint status report on their ongoing efforts to settle this matter with the Environmental Appeals Board (“Board”). This status report is consistent with the EAB’s Third Order Granting Joint Motion to Continue the Current Stay of Proceedings, issued on April 5, 2016. The status of the parties’ settlement negotiations is discussed below.

**1. Background**

On November 4, 2015, Suffolk filed a Petition for Review with the Board requesting review of certain conditions of a National Pollutant Discharge Elimination System (“NPDES”) permit issued by the Region authorizing discharges from Suffolk Downs, a horseracing facility located in Revere and East Boston, MA, into a receiving water named Sales Creek and adjacent wetlands.

On November 16, 2015, the Board granted the parties' request to stay proceedings in order to allow the parties to pursue settlement discussions. See *Order Granting Joint Motion to Stay Proceedings* (November 16, 2015).

On December 18, 2015, the parties filed a Joint Status Report and Motion to Continue the Current Stay of the Proceedings, in which the parties described the status of the settlement negotiations requested additional time to review data and for further exchanges of information. The Board extended the stay until March 15, 2016 and directed the parties to file a status report, including a discussion of next steps, by February 16, 2016. See *Order Granting Joint Motion to Continue the Current Stay of Proceedings* (December 18, 2015).

On February 12, 2016, the parties filed a Joint Status Report and Motion to Further Continue the Stay of Proceedings, in which the parties reported on the progress of the settlement negotiations and requested additional time to complete these negotiations. The Board extended the stay until April 29, 2016 and directed the parties to file a status report, including a discussion of next steps, by March 29, 2016. See *Second Order Granting Joint Motion to Continue the Current Stay of Proceedings* (February 19, 2016).

On March 29, 2016, the parties submitted a Third Joint Status Report and Motion to Further Continue the Stay of Proceedings, in which the parties reported that they have reached an agreement in principle to settle all of the issues raised by Suffolk in its appeal, as well as a number of additional issues, and that they intend to implement the settlement through a proposed permit modification. The parties requested that the Board extend the stay of proceedings for an additional 120 days, and included a schedule for completing their negotiations. In addition the parties proposed a schedule for status reports to update

the Board on their progress. The Board granted the parties' request to further extend the stay and set a schedule for joint status reports to be filed with the Board. See *Third Order Granting Joint Motion to Continue the Current Stay of Proceedings* (April 5, 2016).

The parties filed a Fourth Joint Status Report, on June 3, 2016, indicating that Suffolk was reviewing draft permit modifications and a draft fact sheet to ensure that the documents accurately reflected the terms of the settlement agreed to by the parties.

## **II. Status of Negotiations**

Suffolk provided its concurrence on the draft permit modifications and draft fact sheet. The documents were provided to the Massachusetts Department of Environmental Protection ("MassDEP"). MassDEP has provided its concurrence and EPA is preparing the Draft Permit Modification package for public notice and comment. In addition the parties are discussing how they wish to terminate this permit appeal.

## **III. Next Steps**

The parties anticipate that the remaining steps will occur in accordance with the schedule provided to the Board in Third Joint Status Report and Motion to Further Continue the Stay of Proceedings.

Dated: July 5, 2016

Respectfully submitted,

U.S. EPA – Region 1

Sterling Suffolk Racecourse, LLC

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Fifth Joint Status Report, in connection with Sterling Suffolk Racecourse, LLC, NPDES Appeal No. 15-12, was sent to the following persons in the manner indicated:

By Electronic Filing:

Ms. Eurika Durr  
Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1201 Constitution Avenue, NW  
U.S. EPA East Building, Room 3334  
Washington, DC 20004

By electronic mail, by agreement between the parties:

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Dated: July 5, 2016 \_\_\_\_\_

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